

WSR 06-11-029

PROPOSED RULES

STATE TOXICOLOGIST

[Filed May 8, 2006, 11:45 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 05-01-142.

Title of Rule and Other Identifying Information: Administration of breath alcohol screening test.

Hearing Location(s): Washington State Toxicology Laboratory, 2203 Airport Way South, Seattle, WA 98134, on July 27, 2006, at 9:00 a.m.

Date of Intended Adoption: July 27, 2006.

Submit Written Comments to: Barry K. Logan PhD, Washington State Toxicology Laboratory, 2203 Airport Way South, Seattle, WA 98134, e-mail barry.logan@wsp.wa.gov, fax (206) 262-6018, by July 14, 2006.

Assistance for Persons with Disabilities: Contact Kitty Jacobs, kitty.jacobs@wsp.wa.gov, by July 14, 2006, (206) 262-6000.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Currently, only one breath test screening device is approved for use in the state of Washington - the AlcoSensor III. However, the AlcoSensor III is no longer in production. Because the AlcoSensor III is no longer in production, another breath test screening device or devices must be approved. The amendments to [chapter 448-15 WAC](#) would broaden the range of devices permitted for use, subject to documentation of their compliance with certain minimum standards of performance, outlined in the proposed amendment. The changes would permit individual agencies to select devices meeting federal-type approval standards.

Reasons Supporting Proposal: Development of minimum standards and monitoring of compliance is necessary to ensure accurate measurements in impaired driving investigations.

Statutory Authority for Adoption: [RCW 46.61.506](#).

Statute Being Implemented: [RCW 46.61.506](#), 46.20.308.

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: Barry K. Logan PhD, DABFT, Washington state toxicologist, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Barry K. Logan PhD, DABFT, Washington State Toxicology Laboratory, 2203 Airport Way South, Seattle, WA 98134, (206) 262-6000.

No small business economic impact statement has been prepared under [chapter 19.85 RCW](#). No identifiable small business impact. Affects regulation of government law enforcement agencies only.

A cost-benefit analysis is not required under [RCW 34.05.328](#). This rule is exempted under [RCW 34.05.328](#) (5)(a)(i).

May 8, 2006

Barry K. Logan PhD, DABFT

State Toxicologist

Chapter 448-15 WAC

ADMINISTRATION OF BREATH ALCOHOL SCREENING TEST

AMENDATORY SECTION(Amending [WSR 99-06-047](#), filed 3/1/99)

WAC 448-15-010 Approval of devices. All preliminary breath test (PBT) instruments listed as approved devices on the Conforming Products List of the National Highway Traffic Safety Administration (NHTSA) ~~The following preliminary breath test (PBT) instruments are approved for use in the state of Washington as breath alcohol screening devices, subject to the requirements outlined in the following sections.÷~~

~~—Alcosensor III (Intoximeters, St. Louis, MO).—~~

~~—Any other instruments on the National Highway Traffic Safety Administration (NHTSA) approved products list will be considered for approval in Washington state on application to the state toxicologist, providing that a suitable program for maintenance, certification and operator training is also established and approved.~~

[Statutory Authority: [RCW 46.61.506. 99-06-047](#), § 448-15-010, filed 3/1/99, effective 4/1/99.]

Reviser's note: The typographical errors in the above section occurred in the copy filed by the agency and appear in the Register pursuant to the requirements of [RCW 34.08.040](#).

Reviser's note: [RCW 34.05.395](#) requires the use of underlining and deletion marks to indicate amendments to existing rules. The rule published above varies from its predecessor in certain respects not indicated by the use of these markings.

AMENDATORY SECTION(Amending [WSR 99-06-047](#), filed 3/1/99)

WAC 448-15-020 Use of test results. The devices described in WAC ~~448-15-010~~ are approved for use in ~~establishing aiding police officers to form~~ probable cause that a subject has consumed ~~committed~~ ~~an offense involving the consumption of alcohol.~~ ~~The test results, when~~ For purposes of this section, valid results are considered those obtained from following the approved protocol, by a trained operator using an approved device which has been ~~maintained and~~ certified according to the rules described below., ~~and carried out according to the approved test protocol,~~ Valid results will show to a reasonable degree of scientific certainty the test subject's breath alcohol concentration. Valid ~~The results are therefore suitable to assist in establishing show whether an officer has~~ probable cause to place a person under arrest for alcohol related offenses. These results may not be used on their own for determining, beyond a reasonable doubt, that a person's breath alcohol concentration exceeds a proscribed level such as anticipated under the 'per se' statutes for intoxication.

This preliminary breath test is voluntary, and participation in it does not constitute compliance with the implied consent statute ([RCW 46.20.308](#)).

[Statutory Authority: [RCW 46.61.506. 99-06-047](#), § 448-15-020, filed 3/1/99, effective 4/1/99.]

Reviser's note: The typographical errors in the above section occurred in the copy filed by the agency and appear in the Register pursuant to the requirements of [RCW 34.08.040](#).

Reviser's note: The unnecessary underscoring in the above section occurred in the copy filed by the agency and appears in the Register pursuant to the requirements of [RCW 34.08.040](#).

Reviser's note: [RCW 34.05.395](#) requires the use of underlining and deletion marks to indicate amendments to existing rules. The rule published above varies from its predecessor in certain respects not indicated by the use of these markings.

AMENDATORY SECTION(Amending [WSR 99-06-047](#), filed 3/1/99)

WAC 448-15-030 Test protocol. After advising the subject that this is a voluntary test, and that it is not an alternative to an evidential breath alcohol test as described in chapter ~~448-13~~ 448-16 WAC, the operator shall determine by observation or inquiry, that the subject has not consumed any alcohol in the

fifteen minutes prior to administering the test. If the subject has consumed alcohol during that period, the officer should not administer the screening test for probable cause purposes until fifteen minutes have passed. If the subject responds that they have not consumed any alcohol in the last fifteen minutes, the officer may offer the subject the opportunity to provide a breath sample into the PBT. If the subject consents, the operator will check the temperature of the device to ensure that it is within the normal operating range. The operator will perform the following test protocol: ~~then press the "read" button to obtain a sample of ambient air, and ensure that this results in a reading of 0.003 or less. The subject will be asked to exhale into the device. The device will be activated towards the end of the subject's exhalation, to capture a portion of end-expiratory breath for analysis.~~

(1) ensure a blank test result is obtained

(2) have the subject exhale into the mouthpiece with a full and continuous exhalation

(3) observe the results

[Statutory Authority: [RCW 46.61.506. 99-06-047](#), § 448-15-030, filed 3/1/99, effective 4/1/99.]

Reviser's note: The typographical errors in the above section occurred in the copy filed by the agency and appear in the Register pursuant to the requirements of [RCW 34.08.040](#).

Reviser's note: The unnecessary underscoring in the above section occurred in the copy filed by the agency and appears in the Register pursuant to the requirements of [RCW 34.08.040](#).

AMENDATORY SECTION(Amending [WSR 99-06-047](#), filed 3/1/99)

WAC 448-15-040 Certification. Any PBT used as described in the preceding sections, must be certified at least annually every six months. In order to certify a PBT as accurate, the certifying agency must follow a protocol approved by the state toxicologist. ~~testing shall include at a minimum, a blank test of room air which must give a result of less than 0.005g/210L, and a test of a certified dry gas alcohol standard. The instrument must accurately measure the reference value within ± 0.010 g/210L. A record of certification must be kept by the person responsible for calibration.~~

Certification of PBTs can be performed by persons certified by the state toxicologist as PBT technicians, or by factory authorized representatives, provided that the protocol for certification approved by the state toxicologist is followed.

[Statutory Authority: [RCW 46.61.506. 99-06-047](#), § 448-15-040, filed 3/1/99, effective 4/1/99.]

Reviser's note: The typographical errors in the above section occurred in the copy filed by the agency and appear in the Register pursuant to the requirements of [RCW 34.08.040](#).

Reviser's note: The unnecessary underscoring in the above section occurred in the copy filed by the

agency and appears in the Register pursuant to the requirements of [RCW 34.08.040](#).

AMENDATORY SECTION(Amending [WSR 99-06-047](#), filed 3/1/99)

WAC 448-15-050 PBT operators. Persons certified as DataMaster operators as described in WAC ~~448-16, 448-13-150, who received their certification or recertification after September 1, 1998,~~ shall be trained and authorized to perform the tests described herein on the PBT, for the purposes outlined in this section.

[Statutory Authority: [RCW 46.61.506](#), [99-06-047](#), § 448-15-050, filed 3/1/99, effective 4/1/99.]

Reviser's note: The typographical error in the above section occurred in the copy filed by the agency and appears in the Register pursuant to the requirements of [RCW 34.08.040](#).

Reviser's note: [RCW 34.05.395](#) requires the use of underlining and deletion marks to indicate amendments to existing rules. The rule published above varies from its predecessor in certain respects not indicated by the use of these markings.

AMENDATORY SECTION(Amending [WSR 99-06-047](#), filed 3/1/99)

WAC 448-15-060 PBT technicians. Persons trained according to ~~approved~~ outlines approved ~~prepared~~ by the state toxicologist, in the proper procedures for certifying PBTs instruments shall be certified as PBT technicians. Their responsibilities will include performing periodic certification and maintaining records on such certification. Wallet sized permits shall be issued to persons so qualified. The certification received on successful completion of the training must be renewed every three years. Persons certified as DataMaster technicians as described in WAC ~~448-13-170~~ 448-16 are also certified to perform all the duties of PBT technicians.

[Statutory Authority: [RCW 46.61.506](#), [99-06-047](#), § 448-15-060, filed 3/1/99, effective 4/1/99.]

Reviser's note: The typographical errors in the above section occurred in the copy filed by the agency and appear in the Register pursuant to the requirements of [RCW 34.08.040](#).

© Washington State Code Reviser's Office